

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CASE NO. 04 11539 JLT

**WALTER STICKLE, ANTHONY
CALIENDO, JOHN PITINGOLO and
DANIEL FISHER,
Plaintiffs**

v.

**ARTHUR ORFANOS,
Defendant**

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION
FOR SANCTIONS AND DEFENDANT'S MOTION TO
DENY AND DISMISS, AND PLAINTIFFS' CROSS MOTION
TO STRIKE AND FOR AN ORDER PRECLUDING FURTHER
FILINGS AND IMPOSING PENALTY**

Now come the plaintiffs in the above-captioned matter and hereby oppose the "Defendant's Motion for Sanctions for Submitting False and Misleading Statements" and the "Defendant's Motion to Deny and Dismiss the Plaintiffs' Request Seeking Attorney Fees and Costs as Frivolous." The plaintiffs cross move to strike these motions because they are utterly baseless and improper. The plaintiffs further move this Honorable Court for an Order precluding the defendant from filing any further motions without the Court's prior approval and suggest that the Court order the defendant to pay a penalty to the Court for needlessly consuming its time and resources in this manner.

In support of their opposition and cross motion, the plaintiffs state the following:

1. The defendant has made a serious, but entirely unsupported, allegation of a Rule 11 violation. The only specific reference the defendant makes to the alleged

“false and misleading statements” appears to be paragraphs 8 and 9 of the Plaintiffs’ Motion for Attorneys’ Fees and Costs. These paragraphs essentially state that the defendant forced the plaintiffs to bring this action by refusing to honor their prior requests that he cease the unlawful conduct. These statements are true and accurate.

2. Approximately three weeks before filing this lawsuit, the plaintiffs’ counsel sent by Federal Express a letter to the defendant demanding that he cease and desist his conduct in violating the plaintiffs’ trademark rights and interfering with their business relations. The letter warned the defendant that if he did not stop, litigation would commence that would include demands for substantial damages and attorney fees. (A copy of the June 15, 2004 cease and desist letter sent to the defendant is attached hereto as Exhibit A.) The defendant failed to curb his unlawful actions, and this conduct was set forth in detail in the Plaintiffs’ Motion for Preliminary Injunction, which was granted by this Court on November 2, 2004. The defendant actively opposed that motion and still did not cease his unlawful conduct, prompting this Court to partially allow the Plaintiffs’ Motion for Contempt on March 15, 2005.

3. Both the defendant’s current Motion for Sanctions and his Motion to “Deny and Dismiss the Plaintiffs’ Application for Fees and Costs” are frivolous and only serve to harass and unduly prejudice the plaintiffs, and needlessly consume the time and resources of this Court. Since the defendant was defaulted by this Court on February 9, 2006, he has filed the following:

- Motion to Remove Default;
- Motion to Dismiss;
- Motion for Hearing;
- Supplement to Motion to Remove Default;

- Supplement to Motion to Dismiss;
- Opposition to Motion for Default Judgment;
- Motion for Reconsideration Re: Order on Motion to Set Aside Default;
- Motion to Vacate Judgment;
- Opposition Re: Motion for Attorneys' Fees;
- Motion for Hearing Re: Motion for Attorneys' Fees;
- Supplement and Update to Opposition Re: Motion for Attorneys' Fees;
- Motion for Order to Compel Plaintiffs to Produce Requested Documents

Collectively, the defendant's filings in this case are completely unreasonable and are forcing both the plaintiffs and this Court to expend unnecessary amounts of time and cost. As such, the plaintiffs move this Court for an Order precluding the defendant from making further filings or requests to the plaintiffs unless he seeks and obtains the prior approval of this Court. To obtain such approval, the defendant should have to file a motion with the Court setting forth in detail the nature of the pleading or document to be filed or sent, a copy of the proposed pleading or document, and an explanation of why the pleading or document has a legal basis and is reasonable and appropriate. The plaintiffs also suggest that this Court order the defendant to pay a penalty to the Court, in an amount set by the Court's discretion, to compensate the Court for the unnecessary and unreasonable administrative burdens his conduct has imposed. (A copy of the proposed Order is attached hereto as Exhibit B.)

WHEREFORE, based upon the foregoing, the plaintiffs respectfully request that the Defendant's Motion for Sanctions for Submitting False and Misleading Statements be denied and stricken. The plaintiffs request that the Defendant's Motion to Deny and Dismiss the Plaintiffs' Application for Attorney Fees and Costs be denied and

stricken. The plaintiffs further request that their motion seeking an Order to preclude the defendant from making further filings and to have the defendant pay a penalty to this Court be granted.

Respectfully submitted,

CLARK, HUNT & EMBRY

/s/ Michael B. Newman

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within document was served upon the defendant, Arthur Orfanos, by mail this 28th day of November, 2006.

/s/ Michael B. Newman

Michael B. Newman